

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	§	Chapter 11
	§	
W.R. GRACE & CO., et al.,	§	Jointly Administered
	§	Case No. 01-01139 (JKF)
Debtors.	§	
	§	

**FEE AUDITOR'S FINAL REPORT REGARDING THIRTY-FOURTH
INTERIM AND FINAL FEE APPLICATIONS OF PIPER JAFFRAY & CO. FOR
COMPENSATION FOR SERVICES AND REIMBURSEMENT OF EXPENSES FOR
THE PERIOD FROM FEBRUARY 13, 2006 THROUGH OCTOBER 31, 2009**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Thirty-Fourth Interim and Final Fee Applications of Piper Jaffray & Co. for Compensation for Services and Reimbursement of Expenses for the Period from February 13, 2006 through October 31, 2009 (the “Application” or “Applications”).

BACKGROUND

1. Piper Jaffray & Co. (“PJC”) was retained as financial advisor to David T. Austern, Future Claimants’ Representative. In the Application, PJC seeks approval of fees and expenses as follows: fees totaling \$150,000.00 and expenses totaling \$182.85 for its services from July 1, 2009 through September 30, 2009 (the “Thirty-Fourth Interim Application” or “Thirty-Fourth Interim

Period”), and final approval of fees totaling \$3,347,142.86¹ and expenses totaling \$15,254.52² for services commencing with its retention effective February 13, 2006 through October 31, 2009 (the “Final Application” or “Final Application Period”).

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2009, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, Issued January 30, 1996 (the "U.S. Trustee Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We had no issues with or objections to the Applications, and thus we did not send an initial report to PJC.

DISCUSSION

Thirty-Fourth Interim Period

¹We note that the total of the fees requested in PJC’s 14 prior fee applications, plus the compensation sought for the Thirty-Fourth Interim Period, is \$3,347,142.86. There were no fee reductions ordered by the Court for the prior periods, which periods are discussed in Paragraph 7, and thus PJC has deducted no amounts from this sum in arriving at the figure it seeks of \$3,347,142.86. We note that the Court has ruled on the First through Thirty-Third Interim Periods, but no rulings have been made on the Thirty-Fourth Interim Period.

²We note that the total of the expenses requested in PJC’s 14 prior fee applications, plus the expenses sought for the Thirty-Fourth Interim Period, is \$15,254.52. It does not appear that PJC has deducted from this amount the reduction ordered by the Court for the prior periods, which periods are discussed in more detail in Paragraph 7, to arrive at the figure it seeks of \$15,254.52. We note that the Court has ruled on the First through Thirty-Third Interim Periods, but no rulings have been made on the Thirty-Fourth Interim Period.

3. We note that PJC lists 286.90 hours worked during the Application Period, which computes to an effective hourly rate of \$522.83.

4. We have no issues with or objections to any of the fees or expenses requested in the Thirty-Fourth Interim Application.

5. Thus, we recommend approval of \$150,000.00 in fees and \$182.85 in expenses for PJC's services for the Thirty-Fourth Interim Period.

Final Application Period

6. We note that pursuant to the terms of PJC's original engagement agreement with the Debtors, as approved by the Court on May 8, 2006, PJC was to receive a fee of \$100,000.00 per month for the initial 12 months of its engagement, commencing on February 13, 2006. Following the initial 12-month period, PJC was to receive a monthly fee "to be negotiated that is mutually acceptable to the Future Representative and Piper Jaffray, subject to Bankruptcy Court approval." The parties did not renegotiate the terms of PJC's retention after the expiration of the initial 12-month period.³ Thus, PJC continued to receive \$100,000.00 per month until the parties entered into a modified engagement agreement, approved by the Court on July 29, 2008, whereby PJC was to receive a fee of \$50,000.00 per month commencing March 1, 2008, through the earlier of the effective date of a plan of reorganization or termination of the agreement. At no time have PJC's monthly fees exceeded the amounts authorized by the original or modified engagement agreements.

³The initial 12-month period referenced in the original engagement agreement expired on February 16, 2007. Thus, as reflected in the Fee Auditor's Final Report Regarding Fee Application of Piper Jaffray & Co. for the Twenty-Sixth Interim Period, at FN 1, we asked PJC if it had negotiated a different fee arrangement with the Future Claims Representative, and, if so, whether it had obtained court approval for same. PJC responded that "no different fee arrangement was negotiated and thus we did not seek further court approval."

Thus, we have no objection to PJC's fees on that basis.

Prior Interim Applications

7. We note that we previously filed the following final reports for PJC's prior interim applications, which final reports we incorporate by reference herein, and we also note the following orders that ruled on PJC's prior interim fee applications:

- 20th Period: Fee Auditor's Final Report Regarding Fee Application of Piper Jaffray & Co. for the Twentieth Interim Period (Docket #13178) filed on or about September 9, 2006, in which we recommended approval of fees totaling \$157,142.86 and expenses totaling \$1,572.96. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twentieth Interim Period, dated September 26, 2006 (Docket #13298).
- 21st Period: Fee Auditor's Final Report Regarding Fee Application of Piper Jaffray & Co. for the Twenty-First Interim Period (Docket #13969) filed on or about December 8, 2006, in which we recommended approval of fees totaling \$300,000.00 and expenses totaling \$2,016.83. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-First Interim Period, dated December 19, 2006 (Docket #14069).
- 22nd Period: Fee Auditor's Final Report Regarding Fee Application of Piper Jaffray & Co. for the Twenty-Second Interim Period (Docket #14772) filed on or about March 6, 2007, in which we recommended approval of fees totaling \$300,000.00 and expenses totaling \$3,000.26. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Second Interim Period, dated May 3, 2007 (Docket #15494).
- 23rd Period: Fee Auditor's Final Report Regarding Fee Application of Piper Jaffray & Co. for the Twenty-Third Interim Period (Docket #15974) filed on or about June 6, 2007, in which we recommended approval of fees totaling \$300,000.00 and expenses totaling \$1,180.15. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Third Interim Period, dated June 20, 2007 (Docket #16105).
- 24th Period: Fee Auditor's Final Report Regarding Fee Application of Piper Jaffray & Co. for the Twenty-Fourth Interim Period (Docket #16734)

filed on or about August 31, 2007, in which we recommended approval fees totaling \$300,000.00 and expenses totaling \$1,738.32. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Fourth Interim Period, dated September 25, 2007 (Docket #16916).

25th Period: Fee Auditor's Final Report Regarding Fee Application of Piper Jaffray & Co. for the Twenty-Fifth Interim Period (Docket #17530) filed on or about December 3, 2007, in which we recommended approval of fees totaling \$300,000.00 and expenses totaling \$811.37. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Fifth Interim Period, dated December 13, 2007 (Docket #17629).

26th Period: Fee Auditor's Final Report Regarding Fee Application of Piper Jaffray & Co. for the Twenty-Sixth Interim Period (Docket #18080) filed on or about February 20, 2008, in which we recommended approval of fees totaling \$300,000.00 and expenses totaling \$832.11, reflecting our recommended reduction of \$25.00 in expenses, as reflected in paragraph 4. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Sixth Interim Period, dated March 12, 2008 (Docket #18270).

27th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications With No Fee or Expense Issues for the Twenty-Seventh Interim Period (Docket #18887) filed on or about June 8, 2008, in which we recommended approval of fees totaling \$300,000.00 and expenses totaling \$972.48. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Seventh Interim Period, dated June 23, 2008 (Docket #18989).

28th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications With No Fee or Expense Issues for the Twenty-Eighth Interim Period (Docket #19535) filed on or about September 15, 2008, in which we recommended approval of fees totaling \$250,000.00 and expenses totaling \$333.24. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Eighth Interim Period, dated October 1, 2008 (Docket #19663).

29th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications With No Fee or Expense Issues for the Twenty-Ninth Interim Period (Docket #20150) filed on or about November 26, 2008, in which we recommended approval of fees totaling

\$150,000.00 and expenses totaling \$527.47. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Ninth Interim Period, dated December 17, 2008 (Docket #20283).

30th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications With No Fee or Expense Issues for the Thirtieth Interim Period (Docket #21061) filed on or about March 19, 2009, in which we recommended approval of fees totaling \$150,000.00 and expenses totaling \$1,575.96. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirtieth Interim Period, dated April 2, 2009 (Docket #21173).

31st Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications With No Fee or Expense Issues for the Thirty-First Interim Period (Docket #22047) filed on or about June 10, 2009, in which we recommended approval of fees totaling \$150,000.00 and expenses totaling \$204.84. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-First Interim Period, dated July 7, 2009 (Docket #22354).

32nd Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications With No Fee or Expense Issues for the Thirty-Second Interim Period (Docket #23240) filed on or about September 15, 2009, in which we recommended approval of fees totaling \$100,000.00 and expenses totaling \$144.48. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Second Interim Period, dated September 28, 2009 (Docket #23352).

33rd Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications With No Fee or Expense Issues for the Thirty-Third Interim Period (Docket #23927) filed on or about December 3, 2009, in which we recommended approval of fees totaling \$140,000.00 and expenses totaling \$136.20. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Third Interim Period, dated December 11, 2009 (Docket #23996).

8. We have reviewed the final reports and orders allowing fees and expenses for the prior periods, and we do not believe there is any reason to change any of the amounts awarded for any of these prior periods.

CONCLUSION

9. Thus, we recommend final approval of \$3,347,142.86⁴ in fees and \$15,229.52 in expenses (\$15,254.52⁵ minus \$25.00⁶) for PJC's services for the Final Application Period.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.

By: 

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FEE AUDITOR

⁴We note that the total of the fees requested in PJC's 14 prior fee applications, plus the compensation sought for the Thirty-Fourth Interim Period, is \$3,347,142.86. There were no fee reductions ordered by the Court for the prior periods, which periods are discussed in Paragraph 7, and thus PJC has deducted no amounts from this sum in arriving at the figure it seeks of \$3,347,142.86. We note that the Court has ruled on the First through Thirty-Third Interim Periods, but no rulings have been made on the Thirty-Fourth Interim Period.

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⁶This amount is for the Court-ordered expense reduction for the Twenty-Sixth Interim Period, not previously deducted by PJC. *See* Paragraph 7, *supra*.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 22nd day of January, 2010.



Warren H. Smith

SERVICE LIST

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